

ISN-22144
PD-AMM-601

TOI KEEFE
ARRISA
Loan Number 615-T-009
K
6150171/37

LOAN AGREEMENT

(Agricultural Sector Loan)

between the

Republic of Kenya

and the

United States of America

Date:

Table of Contents

	<u>Page</u>
ARTICLE I <u>The Loan</u>	
Section 1.01. The Loan.....	1
Section 1.02. Purpose and Utilization of the Loan.....	1
ARTICLE II <u>Loan Terms</u>	
Section 2.01. Interest.....	4
Section 2.02. Repayment.....	4
Section 2.03. Application, Currency, and Place of Payment.....	5
Section 2.04. Prepayment.....	5
Section 2.05. Renegotiation of the Terms of the Loan.....	5
ARTICLE III <u>Onlending and Subloan Repayments</u>	
Section 3.01. Reloan by Borrower to CSFC.....	6
Section 3.02. Reloan Agreement.....	7
Section 3.03. Subloans by CSFC to Agricultural Credit Institutions.....	9
Section 3.04. Subloan Agreements.....	10
Section 3.05. Agricultural Production Credit.....	11
Section 3.06. Utilization of Credit Reflows.....	12
ARTICLE IV <u>Conditions Precedent to Disbursement</u>	
Section 4.01. Conditions Precedent to Disbursement.....	15
Section 4.02. Conditions Precedent to Disbursement for Agricultural Credit Activities.....	16
Section 4.03. Additional Conditions Precedent to Disbursement for Agricultural Credit.....	17
Section 4.04. Terminal Dates for Meeting Conditions Precedent to Disbursement.....	18
Section 4.05. Notification of Meeting of Conditions Precedent to Disbursement.....	19
ARTICLE V <u>Covenants and Warranties</u>	
Section 5.01. Implementation of the Loan.....	19
Section 5.02. Continuing Consultation.....	20
Section 5.03. Disclosure of Material Facts and Circumstances.....	21
Section 5.04. Commissions, Fees, and Other Payments.....	22
Section 5.05. Maintenance and Audit of Records.....	22
Section 5.06. Reports.....	24
Section 5.07. Reviews.....	24

	<u>Page</u>
Section 5.08. Continuance of Representations and Matters Furnished to Satisfy Conditions Precedent.....	24
Section 5.09. Taxation.....	24
Section 5.10. Funds and Other Resources to be Provided by the Borrower.....	25
Section 5.11. Utilization of Funds.....	26
Section 5.12. Undertakings.....	26
 <u>ARTICLE VI Procurement</u>	
Section 6.01. Procurement from Code 941 Countries.....	27
Section 6.02. Procurement from Kenya.....	27
Section 6.03. Financing and Procurement Eligibility Dates.....	27
Section 6.04. Goods and Services Not Financed Under Loan.....	28
Section 6.05. Implementation of Procurement Requirements.....	28
Section 6.06. Plans, Specifications and Contracts.....	28
Section 6.07. Reasonable Price.....	30
Section 6.08. Shipping and Insurance.....	30
Section 6.09. Notification to Potential Suppliers.....	32
Section 6.10. Information and Marking.....	32
Section 6.11. Motor Vehicles.....	32
 <u>ARTICLE VII Disbursements</u>	
Section 7.01. Disbursements for Foreign Exchange Costs - Letters of Commitment to United States Banks.....	32
Section 7.02. Disbursement for Kenya Currency Costs.....	33
Section 7.03. Other Forms of Disbursement.....	34
Section 7.04. Date of Disbursement.....	34
Section 7.05. Terminal Date for Commitment and Disbursement.....	34
 <u>ARTICLE VIII Cancellation and Suspension</u>	
Section 8.01. Cancellation by the Borrower.....	35
Section 8.02. Events of Default; Acceleration.....	35
Section 8.03. Suspension of Disbursement.....	36
Section 8.04. Cancellation by A.I.D.....	37
Section 8.05. Continued Effectiveness of Agreement.....	38
Section 8.06. Refunds.....	38
Section 8.07. Expenses of Collection.....	39
Section 8.08. Nonwaiver of Remedies.....	39
 <u>ARTICLE IX Miscellaneous</u>	
Section 9.01. Communications.....	40
Section 9.02. Representatives.....	41
Section 9.03. Implementation Letters.....	41
Section 9.04. Promissory Notes.....	42
Section 9.05. Termination Upon Full Payment.....	42

LOAN AGREEMENT dated the 10th day of November, 1975, between the GOVERNMENT OF THE REPUBLIC OF KENYA ("Borrower") and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT ("A.I.D.").

ARTICLE I

The Loan

SECTION 1.01. The Loan. A.I.D. agrees to lend to the Borrower pursuant to the Foreign Assistance Act of 1961, as amended, an amount not to exceed Thirteen Million Five Hundred Thousand United States Dollars (\$13,500,000) ("Loan") to assist the Borrower in financing United States Dollar and local currency costs of agricultural development activities in accordance with the terms and conditions of this Agreement. A.I.D. at its discretion may disburse the Loan in parts. The aggregate amount of disbursements under the Loan is hereinafter referred to as "Principal".

SECTION 1.02. Purpose and Utilization of the Loan. The Loan, together with certain funds generated thereby as described in Article III, shall be used to assist the Borrower in carrying out selected programs and activities in support of the development of the agricultural sector of the Kenyan economy. The Borrower, in accordance with the terms of this Agreement, shall relend to the Cereals and Sugar Finance Corporation (CSFC) the Kenya currency

equivalent of up to Twelve Million One Hundred Eighty Thousand United States Dollars (\$12,180,000) ("Reloan") from the total funds provided under the Loan. Except as the Borrower may propose and A.I.D. approve in writing, the total Loan proceeds shall be apportioned and utilized as follows for three classes of programs and activities (hereinafter designated Part A, Part B and Part C):

Part A. The Borrower shall relend to CSFC the Kenya currency equivalent of Six Million Seven Hundred Thousand United States Dollars (\$6,700,000) and require CSFC to onlend these funds ("Subloans") to the Agricultural Finance Corporation ("AFC") and the Kenya Farmers Association ("KFA") for onlending by AFC and KFA to large commercial farmers for seasonal production purposes.

Part B. The Borrower shall relend to CSFC the Kenya currency equivalent of Three Million Four Hundred Thousand United States Dollars (\$3,400,000) and require the CSFC to lend these funds ("Subloans") to the AFC, KFA, and the Cooperative Bank of Kenya ("CEK") for onlending to progressive small farmers for seasonal production purposes.

Part C. Three Million Four Hundred Thousand United States Dollars (\$3,400,000) are allocated for the purposes of Part C. Of this amount the Borrower shall utilize not less than One Million Three Hundred Twenty Thousand United States Dollars (\$1,320,000) to provide comprehensive production and marketing services (hereinafter "Non-credit Activities") to less progressive small farmers.

Such activities shall be subject to approval by A.I.D. pursuant to Section 4.01(d) of this Agreement. The Borrower shall relend the remainder of the funds allocated for Part C to the CSFC and require CSFC to onlend these funds ("Subloans") to the CEK and such other Agricultural Credit Institutions as may be proposed by the Borrower and approved by A.I.D. in Implementation Letters, to provide agricultural production credit to less progressive small farmers.

The foregoing allocations of funds for Parts A, B and C may be adjusted, with the prior written approval of A.I.D., to permit utilization of Part A funds for purposes of Parts B and C and Part B funds for purposes of Part C.

Onlending of Loan proceeds by the AFC, KFA and CEK and other Agricultural Credit Institutions to eligible farmers for production credit shall be used to finance the local currency costs of certain goods and services as further described in Implementation Letters.

AFC, KFA, CEK and such other institutions as may be approved to receive Subloans from CSFC are hereinafter collectively designated "Agricultural Credit Institutions". Other provisions having particular application to the onlending aspect of the Loan are set forth in Article III of this Agreement.

The programs and activities to be financed under the Loan shall be more fully described in the Implementation Letters referred to in Section 9.03 ("Implementation Letters").

ARTICLE II

Loan Terms

SECTION 2.01. Interest. The Borrower shall pay to A.I.D. interest which shall accrue at the rate of two percent (2%) per annum for ten years following the date of the first disbursement hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance shall accrue from the date of each respective disbursement (as such date is defined in Section 7.04), and shall be computed on the basis of a 365-day year. Interest shall be payable semiannually. The first payment of interest shall be due and payable no later than six (6) months after the first disbursement hereunder, on a date to be specified by A.I.D.

SECTION 2.02. Repayment. The Borrower shall repay to A.I.D. the Principal within forty (40) years from the date of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual installments of Principal and interest. The first installment of Principal shall be payable nine and one-half (9 1/2) years after the date on which the first interest payment is due in accordance with Section 2.01. A.I.D. shall provide the Borrower with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

SECTION 2.03. Application, Currency, and Place of Payment.

All payments of interest and Principal hereunder shall be made in United States Dollars and shall be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, all such payments shall be made to the Office of Financial Management, Agency for International Development, Washington, D.C., U.S.A., and shall be deemed made when received by the Office of Financial Management.

SECTION 2.04. Prepayment. Upon payment of all interest and refunds then due, Borrower shall have the right to prepay, without penalty, all or any part of the Principal. Any such prepayment, unless otherwise stipulated by the Borrower at the time thereof, shall be applied to the installments of Principal in the inverse order of their maturity.

SECTION 2.05. Renegotiation of the Terms of the Loan. The Borrower and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant improvement in the internal and external economic and financial position and prospects of Kenya. Any determination that the economy and financial position of Kenya has significantly improved shall be made jointly by the Borrower and A.I.D.

ARTICLE III

Onlending and Subloan Repayments

SECTION 3.01. Reloan by Borrower to CSFC.

(a) The Borrower agrees to reloan to the CSFC the proceeds of the Loan provided for Parts A and B and a portion of the funds provided for Part C, as specified in Section 1.02, and to take all necessary steps to ensure that such proceeds are thereafter used, applied and administered in accordance with the terms and conditions of this Loan Agreement and of a Reloan Agreement to be approved by A.I.D. pursuant to Section 4.02. The CSFC shall repay Principal and pay interest to the Borrower in such currency as is, at the time of payment, legal tender in Kenya. The CSFC shall pay the Borrower interest at a rate of two percent (2%) per annum on the outstanding balance of the Reloan and on any due and unpaid interest; provided, however, as to interest accruing prior to the date of this Agreement on amounts disbursed by the Borrower to CSFC for Parts A and B, CSFC shall pay the Borrower such interest at the rate of six and one-half percent (6 1/2%) per annum to accrue from the date of each disbursement to CSFC, and the first payment of interest shall be due and payable no later than six months from the date of this Agreement. Except as A.I.D. may otherwise agree in writing, CSFC shall repay the Reloan and pay all accrued interest no later than ten (10) years from the date of the first disbursement to CSFC

under the Reloan. Except as to those funds which are transferred by CSFC to the Borrower pursuant to Section 3.06(d) hereof, the first repayment installment under the Reloan shall be due and payable on a date, to be proposed by the Borrower and approved by A.I.D. in Implementation Letters, providing CSFC a grace period on repayment of Principal.

(b) Funds transferred by CSFC to the Borrower pursuant to Section 3.06(d) of this Agreement shall be credited as repayments of the Reloan.

SECTION 3.02. Reloan Agreement.

(a) All terms and conditions governing or applicable to the Reloan shall be set forth or incorporated in the Reloan Agreement between the Borrower and CSFC to be approved by A.I.D. pursuant to Section 4.02. The Reloan Agreement shall be made subject to all of the terms and conditions of this Agreement. The Borrower shall fully enforce and ensure full compliance with the Reloan Agreement in accordance with the terms of this Agreement. No amendments, modifications or changes shall be made in the Reloan Agreement without the prior written approval of A.I.D.

(b) In addition to such other provisions as may be required pursuant to paragraph (a) of this Section, the Reloan Agreement shall contain the following:

- (1) a covenant by CSFC that Subloan repayments and interest shall be deposited in a Special Account maintained by CSFC and applied and utilized as set forth in Section 3.06 of this Agreement;

- (ii) an agreement by CSFC that its obligations under the Reloan Agreement shall be carried out with due diligence and efficiency and in accordance with sound technical, administrative, and financial practices, in conformity with the terms of this Agreement and applicable statutes, charters, by-laws, regulations, policies and procedures;
- (iii) an agreement by CSFC to make Subloans to Agricultural Credit Institutions in accordance with the terms and conditions of this Agreement and an agreement by CSFC to require under the Subloan Agreements that such Agricultural Credit Institutions extend agricultural production credit in accordance with the terms and conditions of the Reloan Agreement and the Loan Agreement;
- (iv) an agreement by CSFC to furnish to the Borrower and A.I.D. at such intervals as A.I.D. may specify to the Borrower in Implementation Letters, showing with respect to Subloans to Agricultural Credit Institutions, such information as the Borrower and A.I.D. may reasonably request;
- (v) an agreement by CSFC to require and ensure under Subloan Agreements that such information as the Borrower and A.I.D. may reasonably request with respect to agricultural production credit extended to farmers shall be made available for inspection by the Borrower and A.I.D. at intervals specified in Implementation Letters; such information shall be made available by Agricultural Credit Institutions or cooperative societies and shall include, without limitation, the following: (a) agricultural production credit identification number or the borrowing farmer's name, (b) identification of the borrowing farmer as a large commercial farmer, a progressive small farmer, or a less progressive small farmer, (c) date of the agricultural production, (d) amount of the agricultural production credit, and (e) crop for which the agricultural production credit is to be used.

SECTION 3.03. Subloans by CSFC to Agricultural Credit Institutions.

(a) The Borrower agrees to take such steps as may be necessary to ensure that CSFC in accordance with this Agreement and the Reloan Agreement and Subloan Agreements, onlends the Reloan funds provided for Part A to AFC and KFA, onlends the Reloan funds provided for Part B to AFC, KFA and CEK and onlends the Reloan funds provided for Part C to CEK, and such other Agricultural Credit Institutions as may be approved by A.I.D. and the Borrower, consistent with the allocations for such purposes specified in Section 1.02. The Borrower agrees to take such steps as may be necessary to ensure that such Subloans are promptly and efficiently used, applied and administered for the purposes specified in the Agreement and in accordance with the terms and conditions of this Agreement, the Reloan Agreement and the Subloan Agreements.

(b) In regard to Subloans under Parts A and B, AFC, KFA and CEK shall repay Principal and pay interest to CSFC in such currency as is, at the time of payment, legal tender in Kenya. In connection with such Subloans AFC, KFA and CEK shall pay CSFC interest, which shall accrue from the dates of disbursement by CSFC, at a rate of not less than six percent (6%) per annum on the outstanding balance of Subloans and on any due and unpaid interest accrued thereon and shall repay such amounts as are disbursed by CSFC under the Subloans, together with all due and unpaid interest accrued thereon, within fifteen (15) months from the dates of respective disbursements.

(c) In regard to Subloans to CEK under Part C, CEK shall repay Principal and pay interest to CSFC in such currency as is, at the time of payment, legal tender in Kenya. In connection with such Subloans, CEK shall pay CSFC interest at a rate of not less than three percent (3%) per annum on the outstanding disbursed balance of the Subloans and on any due and unpaid interest accrued thereon and shall repay such amounts as are disbursed under the Subloans, together with all due and unpaid interest accrued thereon, within fifteen (15) months from the dates of respective disbursements.

(d) Subloans under Part C to Agricultural Credit Institutions other than CEK shall be repaid and interest shall be payable on such terms and conditions as shall be agreed upon by A.I.D. in Implementation Letters.

SECTION 3.04. Subloan Agreements.

(a) All terms and conditions governing or applicable to Subloans shall be set forth or incorporated in Subloan Agreements to be approved by A.I.D. pursuant to Section 4.03 and approved by the Borrower. The Subloan Agreements shall be made subject to all terms and conditions of this Agreement. The Borrower shall take all steps necessary to assure that Subloan Agreements are fully enforced and complied with in accordance with the terms of this Agreement. No amendments, modifications or changes shall be made in Subloan Agreements without the prior written approval of A.I.D. and the Borrower.

(b) In addition to such other provisions as may be required pursuant to paragraph (a) of this Section, the Subloan Agreements shall further provide, in form and substance satisfactory to A.I.D. that the Agricultural Credit Institutions shall

- (i) represent, warrant and agree that their operations and affairs are and will be conducted with due diligence and efficiency and in accordance with sound technical, administrative and financial practices, in conformity with the terms of this Agreement and applicable statutes, charters, by-laws, regulations, policies and procedures;
- (ii) agree to make Subloans in accordance with the terms and conditions of this Agreement and the Reloan Agreement;
- (iii) agree to ensure that such information as the Borrower and A.I.D. may reasonably request with respect to agricultural production credit extended to farmers shall be made available for inspection by the Borrower and A.I.D. at intervals specified in Implementation Letters; such information shall be made available by the Agricultural Credit Institutions or cooperative societies and shall include, without limitation, the following: (a) agricultural production credit identification number or borrowing farmer's name, (b) identification of the borrowing farmer as a large commercial farmer, a progressive small farmer, or a less progressive small farmer, (c) date of agricultural production credit, (d) amount of agricultural production credit, and (e) crop for which agricultural production credit is to be used.

SECTION 3.05. Agricultural Production Credit.

(a) The Borrower agrees to take such steps as may be necessary to ensure that Agricultural Credit Institutions promptly and effect-

ively utilize the Subloans to extend agricultural production credit, directly or through cooperatives, to eligible farmers. Such production credit shall be extended on terms and conditions and at interest rates as shall be agreed upon between the Borrower and A.I.D. and in accordance with procedures specified in Implementation Letters and the terms of this Agreement, the Reloan Agreement and the Subloan Agreements.

(b) Categories of farmers eligible to receive agricultural production credit under Parts A, B, and C, respectively, as well as the goods and services which may be financed with such credit, shall be set forth in Implementation Letters.

SECTION 3.06. Utilization of Credit Reflows.

(a) The Borrower agrees and covenants, and CSFC shall also agree and covenant in the Reloan Agreement, that the repayments to CSFC under Part A and Part B Subloans, together with interest paid thereon, (hereinafter collectively "Credit Reflows") shall be deposited in a Special Account by CSFC and shall be reprogrammed, apportioned and utilized by the Borrower, in compliance with plans to be approved by A.I.D. in Implementation Letters, for the following purposes, which are listed in direct order of the priority and precedence which shall be accorded each such purpose in determining the apportionment of funds and the timing of disbursements:

- (1) the support of programs and activities under Part C, including Non-credit Activities and those directly providing production credit;

- (ii) the support of other programs and activities, including Non-credit Activities and those directly providing production credit, which assist the category of farmers classified under Part C as less progressive small farmers;
- (iii) the support of other programs and activities, including Non-credit Activities and those directly providing production credit, which assist the category of farmers classified under Part B as progressive small farmers.

Subject to the order of priorities specified above, funds in the Special Account to the maximum practicable extent shall be re-programmed, apportioned and utilized only for the purposes described in sub-paragraphs (i) and (ii) above.

(b) Before being utilized pursuant to paragraph (a) of this Section, Credit Reflows under Part A and Part B Subloans deposited in the Special Account may be used to meet the cost of the following:

- (i) Interest payable by CSFC to Borrower as described in Section 3.01 of this Agreement; and
- (ii) a reasonable charge for the administrative costs of CSFC services in an amount not to exceed one-half percent (1/2%) per annum on the outstanding disbursed balance of the Subloans under Parts A and B and the outstanding disbursed balance of agricultural production credit financed out of the Special Account.

(c) The Borrower agrees and covenants, and CSFC shall also agree and covenant in the Reloan Agreement, that repayments to CSFC under Part C Subloans, together with interest paid thereon, (hereinafter collectively "Credit Reflows") shall be deposited in the Special Account by CSFC and shall be reprogrammed, apportioned and

utilized by the Borrower, in compliance with plans to be approved by A.I.D. in Implementation Letters, solely for support of Part C programs and activities assisting the category of farmers classified under Part C as less progressive small farmers. However, before being so reprogrammed Credit Reflows under Part C Subloans may be utilized to meet the following costs as they accrue:

- (i) the payment of interest by CSFC to Borrower as described in Section 3.01 but at a rate not in excess of two percent (2%) per annum;
- (ii) the payment of a reasonable charge for the administrative costs of CSFC services in an amount not to exceed one-half percent (1/2%) per annum on the outstanding disbursed balance of Subloans under Part C and the outstanding disbursed balance of agricultural production credit financed out of the Special Account.

(d) The Borrower agrees and covenants, and the CSFC shall agree and covenant in the Reloan Agreement, that funds deposited in the Special Account to be utilized for Non-credit Activities shall be transferred from the Special Account to the Borrower for such purposes as the Borrower and A.I.D. may agree and as specified in Implementation Letters.

(e) Except as A.I.D. may otherwise agree in writing, Credit Reflows, including amounts received by the Borrower, and CSFC respectively shall not be used to assist that category of farmers classified under Part A as large commercial farmers.

(f) The Borrower agrees and covenants, and CSFC shall agree and covenant in the Reloan Agreement, that, except as A.I.D. may otherwise agree in writing, Credit Reflows and subsequent receipts

generated by successive onlending of Credit Reflows shall be reprogrammed and utilized in accordance with this Agreement for three (3) years from the date of the last disbursement under the Loan; provided, that such reprogramming and utilization in any event shall continue at least until an amount equal to the total Credit Reflows to CSFC, less the charges for interest and administrative services specified in Section 3.06(b) and 3.06(c), has been reprogrammed and utilized in accordance with this Agreement.

(g) After satisfaction of Section 3.06(f), the reprogramming and utilization by the Borrower of Credit Reflows and subsequent receipts shall not be subject to approval by A.I.D. pursuant to the foregoing provisions of Section 3.06.

ARTICLE IV

Conditions Precedent to Disbursement

SECTION 4.01. Conditions Precedent to Disbursement. Prior to the first disbursement under the Loan, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An opinion of the Borrower's Attorney General that this Agreement has been duly authorized and/or ratified by and executed on behalf of the Borrower, and that it constitutes a valid and legally binding obligation of the Borrower in accordance with all of its terms;

(b) A statement of the names of the persons holding or acting in the office of the Borrower specified in Section 9.02 and a specimen signature of each person specified in such statement;

(c) Evidence of the source and availability of funds for the Borrower's contribution required under Section 5.10(a); and

(d) A comprehensive initial plan for Part C Non-credit Activities during the period from June 30, 1975 to December 31, 1978, including plans for the administration and evaluation of the Activities.

SECTION 4.02. Conditions Precedent to Disbursement for Agricultural Credit Activities. Prior to any disbursement for the purpose of providing agricultural production credit, the Borrower shall, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

(a) An executed Reloan Agreement between the Borrower and CSFC;

(b) An opinion of legal counsel satisfactory to A.I.D.

(i) that the CSFC is a duly organized entity existing in good standing under the laws of the Republic of Kenya;

(ii) that the CSFC has taken all corporate and legal actions under the laws and regulations of the Republic of Kenya to assure its complete possession of, and that it presently has, full authority essential to the effective performance by CSFC of its obligations under the Reloan Agreement, the Subloan Agreements and in accordance with this Agreement;

(iii) that there are no legal inhibitions to the effective performance by CSFC of such obligations;

- (iv) that CSFC's performance of such obligations will not conflict or result in any violation of any agreement, franchise, concession, license, permit, decree, order, statute, ordinance, rule, regulation charter or by-law; and
- (v) that there are no pending or threatened actions or proceedings before any court or agency which may materially adversely affect CSFC's financial condition or operations.

(c) Certified copies of CSFC's statutory authority, charter, by-laws, and other documentation governing the conduct of its operations, including the interest rate structure, rules, regulations, policies, and procedures to be used in making loans and such other statements concerning the status and assets of the CSFC as A.I.D. may reasonably request.

SECTION 4.03. Additional Conditions Precedent to Disbursement for Agricultural Credit. Notwithstanding satisfaction of the foregoing conditions, prior to disbursement by A.I.D. of funds to be used to finance a Subloan to an Agricultural Credit Institution, the Borrower, except as A.I.D. may otherwise agree in writing, shall furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An executed Subloan Agreement between CSFC and the Agricultural Credit Institution receiving the Subloan;
- (b) An opinion of legal counsel satisfactory to A.I.D.
 - (1) that the Agricultural Credit Institution receiving the Subloan is a duly organized entity existing under the laws of the Republic of Kenya;

- (ii) that the Agricultural Credit Institution receiving the Subloan has taken all corporate and legal actions under the laws and regulations of the Republic of Kenya to assure complete possession of, and that it presently has, full authority essential to its effective performance of its obligations under the Subloan Agreement and in accordance with the terms of this Agreement;
- (iii) that there are no legal inhibitions to the effective performance by the Agricultural Credit Institution of such obligations;
- (iv) that the Agricultural Credit Institution's performance of such obligations will not conflict or result in any violation of any agreement, franchise, concession, license, permit, decree, order, statute, ordinance, rule, regulation charter or by-law; and
- (v) that there are no pending or threatened actions or proceedings before any court or agency which may materially adversely affect the Agricultural Credit Institution's financial condition or operation.

SECTION 4.04. Terminal Dates for Meeting Conditions Precedent to Disbursement.

(a) If all of the conditions specified in Section 4.01 and Section 4.02 shall not have been met within one hundred-twenty (120) days from the date of this Agreement or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may partially or wholly terminate this Agreement by giving written notice to the Borrower. Upon the giving of such notice, this Agreement and the obligations of the parties hereunder shall terminate in accordance with the terms of such notice.

(b) If the conditions specified in Section 4.03 shall not have been met in regard to all funds allocated for onlending within one hundred-twenty (120) days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, then A.I.D., at its option, may partially or wholly terminate this Agreement by giving written notice to the Borrower, reserving the right to provide funding for such programs and activities as A.I.D. may select. Upon the giving of such notice, this Agreement and the obligations to the parties hereunder shall terminate in accordance with the terms of such notice.

SECTION 4.05. Notification of Meeting of Conditions Precedent to Disbursement. A.I.D. shall notify the Borrower upon determination by A.I.D. that respective conditions precedent to disbursement have been met.

ARTICLE V

Covenants and Warranties

SECTION 5.01. Implementation of the Loan.

(a) The Borrower shall utilize the funds provided under the Loan and carry out its obligations and perform the activities required of it under this Agreement in conformity with sound financial and administrative practices and with all plans, contracts, and other arrangements agreed to or approved by A.I.D. pursuant to this Agreement. The Borrower shall take all necessary steps to ensure that

the CSFC, Agricultural Credit Institutions, and participating cooperative unions and societies carry out their obligations connected with the Loan with due diligence and efficiency and in conformity with sound financial and administrative practices.

The Borrower covenants and represents that any Parliamentary or legislative action necessary for the successful implementation of Non-credit Activities either under Part C or to be financed by Subloan Repayments has been completed.

(b) It is the understanding of the parties hereto that Borrower bears the responsibility for fulfilling the representations, warranties, and covenants in this Agreement despite the fact that the CSFC, Agricultural Credit Institutions, and participating cooperatives and societies may be in a direct position to affect the performance of such undertakings. Accordingly, the Borrower agrees to ensure the due and faithful performance of such undertakings by the CSFC, the Agricultural Credit Institutions, and the participating cooperatives and societies. Included among the obligations hereunder shall be the forwarding to the CSFC, the Agricultural Credit Institutions and the participating cooperatives and societies, and the enforcement thereof, of the substance of various A.I.D. determinations and Letters of Implementation made or issued pursuant to this Agreement.

SECTION 5.02. Continuing Consultation. The Borrower and A.I.D. shall cooperate fully to ensure that the purpose of the Loan will be accomplished. To this end, the Borrower and A.I.D.

shall from time to time; at the request of either party, exchange views through their representatives with regard to the Borrower's plans and performance in implementation of this Agreement and the performance by CSFC, the Agricultural Credit Institutions, and the participating cooperative unions and societies, of their obligations in accordance with this Agreement, the utilization of funds provided under this Agreement, and other matters relating to this Agreement.

SECTION 5.03. Disclosure of Material Facts and Circumstances.

The Borrower represents and warrants that all facts and circumstances that it has disclosed or caused to be disclosed to A.I.D. in the course of obtaining the Loan are accurate and complete, and that it, to its best knowledge, has disclosed to A.I.D., accurately and completely, all facts and circumstances that might materially affect the utilization of the Loan, the attainment of the purpose of the Loan, the completion of the programs and activities financed under the Loan, and the discharge of the Borrower's obligations under this Agreement, and the Borrower shall promptly inform A.I.D. of any facts and circumstances that may hereafter arise that might materially affect, or that it is reasonable to believe might materially affect, the discharge of the Borrower's obligations under this Agreement, or the discharge of the obligations of other institutions in connection with the onlending described in this Agreement.

SECTION 5.04. Commissions, Fees, and Other Payments. Borrower warrants and covenants that in connection with obtaining the Loan, or taking any action under or with respect to this Agreement, or the onlending described herein, it has not paid, and will not pay or agree to pay, nor to the best of its knowledge has there been paid nor will there be paid or agreed to be paid by any other person or entity, commissions, fees, or other payments of any kind, except as regular compensation to the Borrower's full time officers and employees or as compensation for bona fide professional, technical, or comparable services. The Borrower shall promptly report to A.I.D. any payment or agreement to pay for such bona fide professional, technical, or comparable services to which it or CSFC or any Agricultural Credit Institution is a party or of which it has knowledge (indicating whether such payment has been made or is to be made on a contingent basis), and if the amount of any such payment is deemed unreasonable by A.I.D., the same shall be adjusted in a manner satisfactory to A.I.D.

SECTION 5.05. Maintenance and Audit of Records. The Borrower shall maintain, or cause to be maintained, in accordance with sound accounting principles and practices consistently applied, books, records, and other documents, which may be more particularly described in Implementation Letters, relating to this Agreement and the programs and activities financed hereunder. Such records shall, without limitation, be adequate to show:

(a) Disbursements by the Borrower to the CSFC, and by the CSFC to the Agricultural Credit Institutions extending credit financed under this Agreement;

(b) The financial condition of CSFC and of Agricultural Credit Institutions extending credit financed under this Agreement, including records of defaults and repayments by borrowing farmers and cooperatives and records of the status of repayment by Agricultural Credit Institutions to the CSFC;

(c) The amounts, dates and purposes of agricultural production credit extended to farmers and financed under this Agreement;

(d) The eligibility of farmers receiving credit financed under Part A, B or C, as may apply;

(e) The use by the Borrower of all Loan funds provided for Non-credit Activities including the cost of goods and services procured therewith and the procedures followed in such procurement;

(f) The progress of the Non-credit Activities financed by the Loan.

The Borrower shall cause such books and records to be regularly audited, in accordance with sound auditing standards, for such period and at such intervals as A.I.D. may reasonably require, and shall cause such books and records to be maintained for five years after the date of the last disbursement by A.I.D. or until all sums due to A.I.D. under this Agreement have been paid, whichever date shall first occur.

SECTION 5.06. Reports. The Borrower shall cause to be furnished to A.I.D. such information and reports relating to the Loan, to the onlending financed by the Loan, to the reprogrammed Subloan Repayments and to the programs and activities financed under the Loan, as A.I.D. may reasonably request.

SECTION 5.07. Reviews. The authorized representatives of A.I.D. shall have the right at all reasonable times to review, audit and inspect the programs and activities financed under the Loan, the use of the proceeds of the Loan, including onlending financed under the Loan, and the Borrower's and the Agricultural Credit Institutions' books, records, and other documents relating to the programs and activities, the onlending, and the utilization of all goods and services financed under the Loan. The Borrower shall cooperate with A.I.D. to facilitate such reviews, audits and inspections and shall permit representatives of A.I.D. to visit any part of Kenya for purposes relating to the Loan.

SECTION 5.08. Continuance of Representations and Matters Furnished to Satisfy Conditions Precedent. Except as otherwise provided in this Agreement, unless A.I.D. otherwise agrees in writing, the Borrower shall continue in force and effect for the life of this Agreement, exactly as originally made or furnished, any representation made or opinion or agreement furnished to satisfy a condition precedent under this Agreement.

SECTION 5.09. Taxation. This Agreement, the Reloan Agreement, the Subloan Agreements, the Loan, the Reloan, the Subloan, and any

evidence of indebtedness issued in connection therewith shall be free from, and the Principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under the laws in effect within Kenya. To the extent that (i) any contractor, including any consulting firm, any personnel of such contractor financed hereunder, and any property or transactions relating to such contracts, and (ii) any commodity procurement transaction financed hereunder, are not exempt from identifiable taxes, tariffs, duties, and other levies imposed under the laws in effect in Kenya, the Borrower shall, as and to the extent prescribed in and pursuant to Implementation Letters, pay or reimburse the same under Section 5.10(b) of this Agreement with funds other than those provided under the Loan. No clearly identifiable taxes, tariffs, duties or other levies of any nature whatsoever imposed under any laws in effect in Kenya may be financed hereunder.

SECTION 5.10. Funds and Other Resources to be Provided by the Borrower.

(a) The Borrower agrees to make contributions between February 1, 1975 and the final disbursement under the Loan, in cash or in kind, equal in value to at least one-third (1/3) of the amount disbursed under the Loan, to activities, programs or projects which provide seasonal production credit to farmers or provide production and marketing services and production credit to less progressive small farmers. In computing the Borrower's contribution there shall be included that amount of seasonal production credit advances made under the 1975

Guaranteed Minimum Return program which exceeds such credit advances made available under the 1974 Guaranteed Minimum Return program.

(b) In addition to its required contribution under Section 5.10(a) hereof, the Borrower shall provide promptly as needed, all funds, in addition to the Loan, and all other resources required for the timely and effective completion of Activities which A.I.D. assists in financing under the Loan.

SECTION 5.11. Utilization of Funds.

(a) Except as A.I.D. may otherwise agree in writing, Borrower shall use the funds provided under the Loan only for programs and activities agreed upon by Borrower and A.I.D.

(b) The Borrower shall utilize the reprogrammed Credit Reflows generated by the Loan to supplement the Borrower's Agricultural Sector Budget, rather than to replace funding otherwise available.

SECTION 5.12. Undertakings. Except as A.I.D. may otherwise agree in writing, Borrower shall:

(a) Undertake to carry out at 12-month intervals starting not later than December 1976 an evaluation of the programs and activities financed under the Loan.

(b) Undertake to the best of its ability to incorporate evaluation results from the activities financed under Part C into existing or planned programs directed at small farmers.

ARTICLE VI

Procurement

SECTION 6.01. Procurement from Code 941 Countries. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.01 shall be used exclusively to finance procurement for the programs and activities financed under this Agreement of goods and services having both their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts are entered into therefor. Ocean shipping shall qualify as an eligible service provided the vessel furnishing the transportation services is registered in a country included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

SECTION 6.02. Procurement from Kenya. Except as A.I.D. may otherwise agree in writing, disbursements made pursuant to Section 7.02 shall be used exclusively to finance procurement by borrowing farmers under agricultural credit activities, and procurement for other activities financed under this Agreement, of goods and services having their source and origin in Kenya or countries included in A.I.D. Geographic Code 941 as in effect at the time orders are placed or contracts entered into for such goods and services.

SECTION 6.03. Financing and Procurement Eligibility Dates. Except as A.I.D. may otherwise agree in writing, no expenditures or lending by Borrower pursuant to Part A and Part B, otherwise

eligible for financing under this Agreement, shall be financed with funds disbursed under the Loan, if such expenditures or onlending occurred prior to February 1, 1975, and no expenditure or onlending by Borrower pursuant to Part C, otherwise eligible for financing under this Agreement, shall be financed with funds disbursed under the Loan if such expenditures or onlending occurred prior to July 1, 1975. Additionally, no goods or services shall be financed under the Loan with funds not provided for agricultural credit, if orders were placed or contracts entered into for such goods and services prior to July 1, 1975.

SECTION 6.04. Goods and Services Not Financed Under Loan.

Goods and services procured for the activities financed under this Agreement but not financed under the Loan, shall have their source and origin in countries included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time orders are placed for such goods and services.

SECTION 6.05. Implementation of Procurement Requirements.

The definitions applicable to the eligibility requirements of Sections 6.01, 6.02, and 6.04 will be set forth in detail in Implementation Letters.

SECTION 6.06. Plans, Specifications and Contracts.

(a) Except as A.I.D. may otherwise agree in writing, the Borrower shall furnish to A.I.D. all plans, specifications, construction schedules, bid documents, contracts, and agreements relating to the

programs and activities financed under this Agreement, and any modifications therein, whether or not the goods and services to which they relate are financed under the Loan.

(b) Except as A.I.D. may otherwise agree in writing, all of the plans, specifications, and construction schedules furnished pursuant to subsection (a) above shall be approved by A.I.D. in writing.

(c) Except as A.I.D. may otherwise agree in writing, all bid documents and documents related to the solicitation of proposals relating to goods and services financed under the Loan shall be approved by A.I.D. in writing prior to their issuance. All plans, specifications, and other documents relating to goods and services financed under the Loan shall be in terms of United States standards and measurements, except as A.I.D. may otherwise agree in writing.

(d) Except as A.I.D. may otherwise agree in writing, the following contracts financed under the Loan shall be approved by A.I.D. in writing prior to their execution:

- (i) contracts for engineering and other professional services;
- (ii) contracts for construction services;
- (iii) contracts for such other services as A.I.D. may specify; and
- (iv) contracts for such equipment and materials as A.I.D. may specify.

In the case of any of the above contracts for services, A.I.D. shall also approve in writing the contractor and such contractor personnel

as A.I.D. may specify. Material modifications in any of such contracts and changes in any of such personnel shall also be approved by A.I.D. in writing prior to their becoming effective.

SECTION 6.07. Reasonable Price. No more than reasonable prices shall be paid for any goods or services financed, in whole or in part, under the Loan, as more fully described in Implementation Letters. Such items shall be procured on a fair and, except for professional services, on a competitive basis in accordance with procedures therefor prescribed in Implementation Letters.

SECTION 6.08. Shipping and Insurance.

(a) Such goods financed under the Loan as may be transported to Kenya by sea shall be transported on flag carriers of any country included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of shipment.

(b) Unless A.I.D. shall determine that privately owned United States flag commercial vessels are not available at fair and reasonable rates for such vessels, (i) at least fifty percent (50%) of the gross tonnage of all goods financed under the Loan (computed separately for dry bulk carriers, dry cargo liners, and tankers) and transported on ocean vessels shall be transported on privately owned United States flag commercial vessels, and (ii) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed under the Loan and transported on dry cargo liners shall be paid to or for the benefit of privately owned United States flag commercial vessels.

(c) No such goods may be transported on any ocean vessel (or aircraft) (i) which A.I.D., in a notice to the Borrower, has designated

as ineligible to carry A.I.D.-financed goods, or (ii) which has been chartered for the carriage of A.I.D.-financed goods unless such charter has been approved by A.I.D.

(d) If in connection with the placement of marine insurance on shipments financed under United States legislation authorizing assistance to other nations, Kenya, by statute, decree, rule, or regulation, favors any marine insurance company of any country over any marine insurance company authorized to do business in any state of the United States of America, goods procured from the United States and financed under the Loan shall during the continuance of such discrimination be insured against marine risk in the United States of America with a company or companies authorized to do a marine insurance business in any state of the United States of America.

(e) Unless A.I.D. otherwise agrees in writing, Borrower shall insure, or cause to be insured, all goods financed under the Loan against risks incident to their transit to the point of their use. Such insurance shall be issued upon terms consistent with sound commercial practice and cover the full value of the goods, and the proceeds thereof shall be payable in United States dollars or in any other freely convertible currency. Any indemnification received by Borrower under such insurance shall be used to replace or repair any material damage or any loss of the goods insured or shall be used to reimburse Borrower for the replacement or repair of such goods.

Any such replacements shall have their source and origin as specified in Section 6.01 and otherwise be subject to the provisions of this Agreement.

SECTION 6.09. Notification to Potential Suppliers. In order that all United States firms shall have the opportunity to participate in furnishing goods and services to be financed under the Loan, the Borrower shall furnish to A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Implementation Letters.

SECTION 6.10. Information and Marking. The Borrower shall give publicity to the Loan and the project as a program of United States aid, identify the sites of programs and activities, and mark goods financed under the Loan, as prescribed in Implementation Letters.

SECTION 6.11. Motor Vehicles. Except as A.I.D. may otherwise agree in writing, none of the funds provided under the Loan shall be used to finance the procurement of motor vehicles unless such motor vehicles have been manufactured in the United States.

ARTICLE VII

Disbursements

SECTION 7.01. Disbursements for Foreign Exchange Costs - Letters of Commitment to United States Banks. Upon satisfaction of conditions precedent, the Borrower may, from time to time, request A.I.D. to issue Letters of Commitment for specified amounts to one or more United States banks, satisfactory to A.I.D., committing A.I.D. to

reimburse such bank or banks for payments made by them to contractors or suppliers, through the use of Letters of Credit or otherwise, for foreign exchange costs of goods and services procured in accordance with the terms and conditions of this Agreement. Payment by a bank to a contractor or supplier will be made by the bank upon presentation of such supporting documentation as A.I.D. may prescribe in Letters of Commitment and Implementation Letters. Banking charges incurred in connection with Letters of Commitment and Letters of Credit shall be for the account of the Borrower and may be financed under the Loan.

SECTION 7.02. Disbursement for Kenya Currency Costs.

(a) Upon satisfaction of conditions precedent, the Borrower may, from time to time, request disbursement by A.I.D. of Kenya currency for onlending in accordance with the terms of this Agreement or for the Kenya currency costs of goods and services procured in accordance with the terms of this Agreement by submitting to A.I.D. such supporting documentation as A.I.D. may prescribe in Implementation Letters. A.I.D., at its option, may make such disbursements from Kenya currency owned by the United States Government or obtained by A.I.D. with United States Dollars.

(b) The United States Dollar equivalent of the Kenya currency made available hereunder will be the amount of United States Dollars required by A.I.D. to obtain Kenya currency if purchased; or if otherwise obtained, the dollar equivalent of the funds disbursed, on the

date of disbursement using the most favorable exchange rate to the dollar then lawfully existing in Kenya.

SECTION 7.03. Other Forms of Disbursement. Disbursements of the Loan may also be made through such other means as the Borrower and A.I.D. may agree to in writing.

SECTION 7.04. Date of Disbursement. Disbursements by A.I.D. shall be deemed to occur (a) in the case of disbursements pursuant to Section 7.01, on the date on which A.I.D. makes a disbursement to the Borrower, to its designee, or to a banking institution pursuant to a Letter of Commitment, and (b) in the case of disbursements pursuant to Section 7.02, on the date on which A.I.D. disburses the Kenya currency to the Borrower or its designee.

SECTION 7.05. Terminal Date for Commitment and Disbursement.

(a) Except as A.I.D. may otherwise agree in writing, no Letter of Commitment, or other commitment documents which may be called for by another form of disbursement under Section 7.03 or amendment thereto shall be issued in response to requests received by A.I.D. in respect to Part C after thirty (30) months from the date on which conditions precedent to disbursement for Part C are satisfied.

(b) Except as A.I.D. may otherwise agree in writing, no disbursement shall be made under Parts A and B against documentation received by A.I.D. or any bank described in Section 7.01 after one (1) year from the date on which conditions precedent to disbursement for Parts A and B are satisfied, and no disbursement shall be made under

Part C against documentation received by A.I.D. or any bank described in Section 7.01 after three (3) years from the date on which conditions precedent to disbursement for Part C are satisfied. A.I.D., at its option, may at any time after expiration of the one (1) year period specified in regard to Parts A and B reduce the Loan by all or any portion of the funds allocated for Parts A and B for which documentation was not received prior to the expiration of the one (1) year period, and may at any time after expiration of the three (3) year period specified in regard to Part C reduce the Loan by any portion of the funds allocated for Part C for which documentation was not received prior to expiration of the three (3) year period.

ARTICLE VIII

Cancellation and Suspension

SECTION 8.01. Cancellation by the Borrower. The Borrower may, with the prior written consent of A.I.D., by written notice to A.I.D., cancel any part of the Loan (i) which, prior to the giving of such notice, A.I.D. has not disbursed or committed itself to disburse, or (ii) which has not then been utilized through the issue of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit.

SECTION 8.02. Events of Default; Acceleration. If any one or more of the following events ("Events of Default") shall occur:

(a) The Borrower shall have failed to pay when due any interest or installment of Principal required under this Agreement;

(b) The Borrower shall have failed to comply with any other provision of this Agreement, including, but without limitation, the Borrower's undertakings and its obligations to carry out the purpose of the Loan and the activities financed under the Loan with due diligence and efficiency;

(c) The Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and A.I.D., or any of its predecessor agencies, then A.I.D. may, at its option, give to the Borrower notice that all or any part of the unrepaid Principal shall be due and payable sixty (60) days thereafter, and, unless the Event of Default is cured within such sixty (60) days:

- (i) such unrepaid Principal and any accrued interest hereunder shall be due and payable immediately; and
- (ii) the amount of any further disbursements made under then outstanding irrevocable Letters of Credit or otherwise shall become due and payable as soon as made.

SECTION 8.03. Suspension of Disbursement. In the event that at any time:

- (a) An Event of Default has occurred;
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Loan will be attained or that the Borrower will be able to perform its

obligations under this Agreement or that the Agricultural Credit Institutions will be able to perform its obligation under the Reloan Agreement; or

(c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.;

(d) Under any other loan agreement, any guaranty agreement, or any other agreement between the Borrower or any of its agencies and the Government of the United States or any of its agencies, the Borrower shall have failed to pay when due any interest or any installment of Principal or any other payment required;

Then A.I.D. may, at its option:

- (i) suspend or cancel outstanding commitment documents to the extent that they have not been utilized through the issue of irrevocable Letters of Credit or through bank payments made other than under irrevocable Letters of Credit, in which event A.I.D. shall give notice to the Borrower promptly thereafter;
- (ii) decline to make disbursements other than under outstanding commitment documents;
- (iii) at A.I.D.'s expense, direct that title to goods financed under the Loan shall be transferred to A.I.D. if the goods are from a source outside the country of the Borrower, are in a deliverable state and have not been offloaded in ports of entry of the country of the Borrower. Any disbursement made or to be made under the Loan with respect to such transferred goods shall be deducted from Principal.

SECTION 8.04. Cancellation by A.I.D. Following any suspension of disbursements pursuant to Section 8.03, if the cause or causes

for such suspension of disbursements shall not have been eliminated or corrected within sixty (60) days from the date of such suspension, A.I.D. may, at its option, at any time or times thereafter, cancel all or any part of the Loan that is not then either disbursed or subject to irrevocable Letters of Credit.

SECTION 8.05. Continued Effectiveness of Agreement. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement shall continue in full force and effect until the payment in full of all Principal and any accrued interest hereunder.

SECTION 8.06. Refunds.

(a) In the case of any disbursement not supported by valid documentation in accordance with the terms of this Agreement, or of any disbursement not made or used in accordance with the terms of this Agreement, A.I.D., notwithstanding the availability or exercise of any of the other remedies provided for under this Agreement, may require the Borrower to refund such amount in United States Dollars to A.I.D. within thirty (30) days after receipt of a request therefor. However, in the event that such disbursement was originally made in local currency and if A.I.D. determines that the amount of such refund can be used to pay the Local Currency Costs of other goods and services approved for financing under the Loan, A.I.D. will accept such refund in local currency. Refunds under this section shall be made available first to finance eligible selected activities hereunder, to the extent justified; the remainder, if any, shall be applied to the

installments of Principal in the order determined in accordance with Section 2.04, and the amount of the Loan shall be reduced by the amount of such remainder. Notwithstanding any other provision in this Agreement, A.I.D.'s right to require a refund with respect to any disbursement under the Loan shall continue for five years following the date of such disbursement.

(b) In the event that A.I.D. receives a refund from any contractor, supplier, or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price for goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall first make such refund available for the cost of goods and services procured for the Project hereunder, to the extent justified, the remainder to be applied to the installments of Principal in the order determined in accordance with Section 2.04, and the amount of the Loan will be reduced by the amount of such remainder.

SECTION 8.07. Expenses of Collection. All reasonable costs incurred by A.I.D., other than salaries of its staff, in connection with the collection of any refund or in connection with amounts due A.I.D. by reason of the occurrence of any of the events specified in Section 8.02 may be charged to the Borrower and reimbursed to A.I.D. in such manner as A.I.D. may specify.

SECTION 8.08. Nonwaiver of Remedies. No delay in exercising or omission to exercise any right, power, or remedy accruing to

A.I.D. under this Agreement shall be construed as a waiver of any such rights, powers, or remedies.

ARTICLE IX

Miscellaneous

SECTION 9.01. Communications. Any notice, request, document, or other communication given, made, or sent by the Borrower or A.I.D. pursuant to this Agreement shall be in writing or by telegram, cable, or radiogram and shall be deemed to have been duly given, made, or sent to the party to which it is addressed when it shall be delivered to such party by hand or by mail, telegram, cable, or radiogram at the following addresses:

TO BORROWER:

Mail Address: Permanent Secretary
Treasury
P. O. Box 30007
Nairobi, Kenya

Cable Address: FINANCE, NAIROBI, KENYA

TO A.I.D.:

Mail Address: Director
Regional Economic Development Services
Office/East Africa
c/o Director, USAID Mission to Kenya
P. O. Box 30261
Nairobi, Kenya

Cable Address: REDSO, AMEMBASSY NAIROBI

Borrower, in addition, shall provide the USAID Mission to Kenya with a copy of each communication sent to A.I.D. Other addresses may be

substituted for the above upon the giving of notice. All notices, requests, communications, and documents submitted to A.I.D. hereunder shall be in English, except as A.I.D. may otherwise agree in writing.

SECTION 9.02. Representatives. For all purposes relative to this Agreement, the Borrower will be represented by the individual holding or acting in the office of Permanent Secretary to the Treasury, Ministry of Finance and Planning, and A.I.D. will be represented by the individual holding or acting in the office of Director, Regional Economic Development Services Office, Nairobi. Such individuals shall have the authority to designate additional representatives by written notice. In the event of any replacement or other designation of a representative hereunder, Borrower shall submit a statement of the representative's name and specimen signature in form and substance satisfactory to A.I.D. Until receipt by A.I.D. of written notice of revocation of the authority of any of the duly authorized representatives of the Borrower designated pursuant to this Section, it may accept the signature of any such representative or representatives on any instrument as conclusive evidence that any action effected by such instrument is duly authorized.

SECTION 9.03. Implementation Letters. A.I.D. shall from time to time issue Implementation Letters that will prescribe the procedures applicable hereunder in connection with the implementation of this Loan Agreement.

SECTION 9.04. Promissory Notes. At such time or times as A.I.D. may request, the Borrower shall issue promissory notes or such other evidences of indebtedness with respect to the Loan, in such form, containing such terms and supported by such legal opinions as A.I.D. may reasonably request.

SECTION 9.05. Termination Upon Full Payment. Upon payment in full of the Principal and of any accrued interest, this Agreement and all obligations of Borrower and A.I.D. hereunder shall terminate.

IN WITNESS WHEREOF the GOVERNMENT OF THE REPUBLIC OF KENYA and the UNITED STATES OF AMERICA, acting through A.I.D., have executed this Loan Agreement on the day and year first written above.

GOVERNMENT OF THE REPUBLIC OF KENYA

By: *Mwai Kibaki*
Title: MINISTER FOR FINANCE
& PLANNING

UNITED STATES OF AMERICA

By: *Joseph P. ...*
Title: ...
Ambassador